

REMARKS

The Office Action mailed January 29, 2008 has been carefully reviewed and these remarks are responsive thereto. Claims 45 and 85 have been amended. Claims 1-44, 46, 50-76 and 78 have been canceled. Reconsideration of the application in view of the foregoing amendments and following remarks is respectfully requested. Each of the Examiner's rejections is discussed below.

SECTION 103

Claims 45, 47-48, 77, and 79-84

Claims 45, 47-48, 77, and 79-84 have been rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 3,316,576 to Urbush ("Urbush") in view of U.S. Patent No. 5,839,148 to Volpenheim ("Volpenheim"). This rejection is respectfully traversed.

The combination of Urbush and Volpenheim fails to disclose or make obvious a toothbrush with a discontinuity in the form of an opening in the head positioned between an inner end of each of at least one of said plurality of third cleaning elements and a plane defined by the second surface, with the discontinuity being defined only by the head and the inner end of at least one of said plurality of third cleaning elements, **wherein no portion of any of the third cleaning elements and no portion of the head extends outwardly beyond the second surface under any condition**, as required by independent claim 1.

As illustrated in Attachment A provided with the Office Action, when the rocking portion 12 of Volpenheim is pivoted about pin 24, a significant portion of its head, and likely at least some portion of its third cleaning elements extend outwardly beyond its second surface. Further, one skilled in the art would not modify Volpenheim such that none of its head and no portion of its third cleaning elements extend outwardly beyond the second surface, since to do so would defeat the purpose of rocking portion 12. Since the combination of Volpenheim and Urbush fails to disclose or make obvious this required limitation, the rejection is improper and should be withdrawn.

Claims 85-87

Claims 85-87 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Urbush in view of Volpenheim and U.S. Patent No. 5,896,614 to Flewitt ("Flewitt"). Flewitt is cited as disclosing elastomeric wipers. This rejection is respectfully traversed.

The combination of Urbush, Volpenheim and Flewitt fails disclose or make obvious a toothbrush with movable elastomeric wipers being movable relative to a head within a discontinuity in the form of an opening in the head positioned between an inner end of each movable elastomeric wiper and a plane defined by the second surface, with the discontinuity being defined only by the head and the inner end of each of the movable elastomeric wipers, **wherein no portion of any of the third cleaning elements and no portion of the head extends outwardly beyond the second surface under any condition** as required by independent claim 85.

As noted above, when the rocking portion 12 of Volpenheim is pivoted about its pin 24, a significant portion of its head, and likely at least some portion of its third cleaning elements extend outwardly beyond its second surface.

Accordingly the rejection is improper and should be withdrawn.

Claim 49

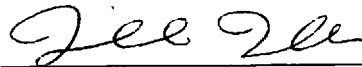
Claim 49 has been rejected under 35 U.S.C. § 103(a) over Urbush in view of Volpenheim, U.S. Patent No. 5,813,079 to Halm ("Halm '079"), and U.S. Patent No. 5,951,158 to Halm ("Halm '158"). This rejection is respectfully traversed.

Halm '079 and '158 fail to overcome the deficiencies of Urbush and Volpenheim discussed above. Accordingly the rejection is improper and should be withdrawn.

CONCLUSION

It is respectfully submitted that this application is in condition for allowance. If any additional fees are required or if an overpayment has been made, the Commissioner is authorized to charge or credit Deposit Account No. 03-2455.

Respectfully submitted,
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Date: March 27, 2008

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